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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle
Kingsbury on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

Defendant.

Case No.: 2:15-cv-01045 RFB-(PAL)

**PLAINTIFFS' SEPARATE STATEMENT
OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR OPPOSITION TO
ZUFFA, LLC'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56-1, Plaintiffs submit these Undisputed Material Facts, together with reference to supporting evidence in support of Plaintiffs' Opposition to Zuffa's Motion for Partial Summary Judgment.

I. Plaintiffs' Response to Zuffa's Statement of Undisputed Material Facts

1. Undisputed.

2. Undisputed.

3. Disputed. Neither the specific uses to which Zuffa would put fighter identity rights (including Plaintiff Quarry's), nor the compensation they would (or would not) receive, are enumerated in the Promotional Agreement, Merchandise Rights Agreements, or Bout Agreements (the "Agreements"). As part of its ongoing anticompetitive scheme, Zuffa continued to exploit Plaintiff Quarry's identity rights at compensation below competitive levels many years after the Agreement was executed, including during and throughout the limitations period (i.e., after December 16, 2014). Quarry Decl. ¶¶ 6-18; Weiler Decl. Exs. 2, 5-13, 16-17, 19-21; Quarry Decl. Ex. 1.

Zuffa entered into multiple agreements that granted its business partners the right to use an athlete's identity—including Plaintiff Quarry's—after December 16, 2014. For example, Zuffa granted Topps the right to use Plaintiff Quarry's identity in 2011, and granted Reebok the right to do so in 2014. Weiler Decl. Exs. 15, 18.

4. Undisputed. Zuffa was able to extract such Identity rights at compensation below competitive levels due to, and as part of, its ongoing anticompetitive scheme. CAC ¶¶ 3, 22, 34, 90-92, 107, 109-34, 151.

5. Undisputed, though immaterial. Plaintiffs do not dispute that Plaintiff Quarry entered into the Promotional and Ancillary Rights Agreement on October 5, 2004.

Plaintiffs do not allege that they were harmed by any one contract by itself, but rather that Zuffa's contracts collectively, together with the other aspects of the ongoing anticompetitive scheme, afforded Zuffa the ability to foreclose competition, and thereby enhance its monopsony power, such that it was able to extract identity rights from each class member at uncompetitive prices, and then continue to exploit those rights during the limitations period.

1 Zuffa suppressed the compensation Plaintiff Quarry received for his Identity rights by engaging
 2 in a multifaceted scheme in violation of Section 2 of the Sherman Act that included the use of exclusive
 3 fighter contracts, the acquisition of rivals, and threats to fighters and rivals to acquire monopsony power
 4 in the market for “Elite Professional MMA Fighter Services.” Consolidated Amended Antitrust Class
 5 Action Complaint (“CAC”) ¶¶ 109-134. Zuffa used this monopsony power to artificially under-
 6 compensate the proposed Class of MMA Fighters such as Plaintiff Quarry for use of their images and
 7 likenesses. CAC ¶¶ 3, 22, 34, 92, 107, 151.

8 6. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

9 7. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

10 8. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

11 9. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

12 10. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

13 11. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

14 12. Disputed (see Response No. 3, supra). Neither the uses of Plaintiff Quarry’s identity rights,
 15 nor the compensation he would receive, are enumerated in the 2004 Promotional Agreement. Zuffa was
 16 able to extract such Identity rights at compensation below competitive levels due to, and as part of, its
 17 ongoing anticompetitive scheme (see Response No. 4, supra).

18 13. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

19 14. Disputed (see Response No. 3, supra). Neither the uses of Plaintiff Quarry’s identity rights,
 20 nor the compensation he would receive, are enumerated in the 2005 Promotional Agreement. Zuffa was
 21 able to extract such Identity rights at compensation below competitive levels due to, and as part of, its
 22 ongoing anticompetitive scheme (see Response No. 4, supra).

23 15. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

24 16. Undisputed.

25 17. Undisputed.

26 18. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

27 19. Disputed (see Response No. 3, supra). Neither the uses of Plaintiff Quarry’s identity rights,
 28 nor the compensation he would receive, are enumerated in the 2005 Promotional Agreement. Further,

1 Zuffa was able to extract such Identity and Ancillary rights at compensation below competitive levels
2 due to, and as part of, its ongoing anticompetitive scheme (see Response No. 4, supra).

3 20. Undisputed.

4 21. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

5 22. Undisputed (but see Response No. 4, supra). Immaterial (see Response No. 5, supra).

6 23. Undisputed that Quarry's last Bout Agreement with Zuffa was executed on January 13, 2010
7 before Quarry's March 31, 2010 bout, but otherwise disputed. Zuffa engaged in an ongoing and
8 continuing anticompetitive scheme of which the successive Promotional Agreements were a part. See
9 Response No. 5, supra.

10 24. Undisputed.

11 25. Disputed. Incomprehensible, calls for a legal conclusion, and otherwise immaterial. See
12 Response No. 5, supra.

13 26. Disputed (see Response No. 3, supra). Neither the uses of Plaintiff Quarry's identity rights,
14 nor the compensation he would receive, are enumerated in the 2010 Bout Agreement. Further, Zuffa
15 was able to extract such Identity and Ancillary rights at compensation below competitive levels due to,
16 and as part of, its ongoing anticompetitive scheme (see Response No. 4, supra).

17 27. Undisputed.

18 28. Undisputed that the January 13, 2010 Bout Agreement was Quarry's final bout agreement
19 with Zuffa, but otherwise disputed. Plaintiffs allege an ongoing and continuing scheme of which the
20 successive Promotional Agreements were a part. Immaterial. See Response No. 5, supra. Further, Zuffa
21 was able to extract such Identity and Ancillary rights at compensation below competitive levels due to,
22 and as part of, its ongoing anticompetitive scheme (see Response No. 4, supra).

23 29. Disputed (see Response No. 3, supra). Neither the uses of Plaintiff Quarry's identity rights,
24 nor the compensation he would receive, are enumerated in the 2010 Bout Agreement. Further, Zuffa
25 was able to extract such Identity and Ancillary rights at compensation below competitive levels due to,
26 and as part of, its ongoing anticompetitive scheme (see Response No. 4, supra).

30. Undisputed, though immaterial (see Response No. 5, *supra*). Zuffa was able to extract such Identity and Ancillary rights at compensation below competitive levels due to, and as part of, its ongoing anticompetitive scheme (see Response No. 4, *supra*).

31. Disputed (see Response No. 3, *supra*). Neither the uses of Plaintiff Quarry's identity rights, nor the compensation he would receive, are enumerated in the Merchandise Rights Agreement. Further, Zuffa was able to extract such Identity and Ancillary rights at compensation below competitive levels due to, and as part of, its ongoing anticompetitive scheme (see Response No. 4, *supra*).

32. Undisputed, though immaterial (see Response No. 5, *supra*).

33. Disputed. Incomplete.

34. Undisputed (but see Response No. 4, *supra*). Immaterial (see Response No. 5, *supra*).

35. Undisputed (but see Response No. 4, *supra*).

36. Disputed (see Response No. 3, *supra*). Neither the uses of Plaintiff Quarry's identity rights, nor the compensation he would receive, are enumerated in the Merchandise Rights Agreement. Further, Zuffa was able to extract such Identity and Ancillary rights at compensation below competitive levels due to, and as part of, its ongoing anticompetitive scheme (see Response No. 4, *supra*).

37. Undisputed (but see Response No. 4, *supra*).

38. Disputed. Plaintiffs allege an ongoing and continuing anticompetitive scheme of which the successive Promotional Agreements with UFC fighters were a part. See Response No. 5, *supra*. Further, Zuffa was able to extract such Identity and Ancillary rights at compensation below competitive levels due to, and as part of, its ongoing anticompetitive scheme (see Response No. 4, *supra*).

39. Undisputed that Zuffa made a payment of \$2,500 to Plaintiff Quarry on or about March 5, 2009, but otherwise disputed. There was no agreement or understanding that any payment made by Zuffa was an "advance" against future uses of Plaintiff Quarry's image or likeness. Quarry Decl. ¶ 22.

40. Undisputed (but see Response No. 4, *supra*).

41. Undisputed that Quarry, along with others, filed his initial Complaint in this matter on December 16, 2014, and also that the last agreement executed between Zuffa and Quarry was executed before that date, but otherwise disputed. Plaintiffs allege an ongoing and continuing scheme of which the successive Promotional Agreements were a part. See Response No. 5, *supra*.

42. Disputed (see Response No. 3, *supra*).

43. Undisputed.

44. Undisputed, though incomplete. Plaintiff Quarry was featured in a series of UFC trading cards created by Topps, including the “2010 Topps UFC Knockout” series that was first published in February 2011. Weiler Decl. Ex. 16. Plaintiff Quarry’s image also first appeared in the “2013 Topps UFC Knockout” series as part of the “Ultimate Knockout Relics Set.” Weiler Decl. Ex. 17.

45. Disputed. As part of its ongoing anticompetitive scheme, Zuffa took multiple overt acts to exploit Quarry’s Identity Rights since December 16, 2010, when it used Plaintiff Quarry’s image or likeness without fair compensation. Each use of Plaintiff Quarry’s image or likeness after December 16, 2010 is a use of his Identity Rights for which he has not been compensated. Quarry Decl. ¶¶ 6-18; Weiler Decl. Exs. 2, 5-13, 16-17, 19-21; Quarry Decl. Ex. 1.

46. This is not a fact that must be admitted or denied as the Complaint speaks for itself about Quarry’s claims.

47. This is not a fact that must be admitted or denied as the Complaint speaks for itself about Quarry’s claims.

48. Undisputed.

49. This is not a fact that must be admitted or denied as the Complaint speaks for itself about Quarry’s claims, but in any event it is disputed.

Plaintiff Quarry does not contend he was harmed by any one contract by itself, but rather that Zuffa’s contracts collectively, together with the other aspects of Zuffa’s ongoing anticompetitive scheme, afforded Zuffa the monopsony power to extract identity rights from him at uncompetitive prices, and then continue to take overt acts to exploit those rights during the limitations period.

Plaintiff Quarry alleges that Zuffa suppressed the compensation he received for his identity rights by engaging in a multifaceted scheme in violation of Section 2 of the Sherman Act that included the use of exclusive fighter contracts, the acquisition of rivals, and threats to fighters and rivals to acquire monopsony power in the market for “Elite Professional MMA Fighter Services.” CAC ¶¶ 109-134. Zuffa used this monopsony power to artificially under-compensate the proposed Class of MMA

1 Fighters such as Plaintiff Quarry for use of their images and likenesses. CAC ¶¶ 3, 22, 34, 92, 107, 151;
 2 Quarry Decl. ¶ 22

3 50. Disputed. The cited testimony states only that, (a) Plaintiff Quarry realized “how little
 4 control [he] had over [his] own work and likeness” before his last fight; (b) Plaintiff Quarry’s layman
 5 understanding of the reason he had little control over his own work and likeness “was, at least in part,
 6 due to the contracts [he] had interred [sic]”;¹ and, (c) that Plaintiff Quarry spoke about his concern that
 7 his likeness rights were being used by the UFC before his last fight. The cited testimony says nothing
 8 about Plaintiff Quarry’s knowledge of the scope and duration of the identity rights that Zuffa
 9 expropriated in the agreements. Zuffa Mot., Ex. G (Quarry Dep. 120:11-19, 121:25-122:12).

10 51. Disputed. Plaintiff Quarry does not dispute that he was aware that Zuffa had been artificially
 11 under-compensating him for the use of his identity rights as of March 2010 as a result and part of
 12 Zuffa’s ongoing anticompetitive scheme.

13 As part of its ongoing anticompetitive scheme, Zuffa took multiple overt acts to exploit Plaintiff
 14 Quarry’s Identity Rights after March 2010 when it exploited Plaintiff Quarry’s image or likeness for
 15 compensation at below competitive levels. Each such exploitation of Plaintiff Quarry’s image or likeness
 16 is a use of his Identity Rights for which he has not been compensated at competitive levels due to
 17 Zuffa’s ongoing scheme. Plaintiff Quarry was not aware of the scope or nature of Zuffa’s future uses of
 18 his likeness or image. Quarry Decl. ¶¶ 6-18; Weiler Decl. Exs. 2, 5-13, 16-17, 19-21; Quarry Decl. Ex. 1.

19 52. Undisputed, though immaterial (see Response No. 5, supra). Additionally, as part of its
 20 ongoing anticompetitive scheme, Zuffa engaged in multiple overt acts to exploit Plaintiff Quarry’s image
 21 or likeness since December 16, 2010. Quarry Decl. ¶¶ 6-18; Weiler Decl. Exs. 2, 5-13, 16-17, 19-21;
 22 Quarry Decl. Ex. 1.

23 53. Disputed (see Response No. 3, supra). As part of its ongoing anticompetitive scheme, Zuffa
 24 took multiple overt acts to exploit Plaintiff Quarry’s Identity Rights after March 2010 when it used
 25 Plaintiff Quarry’s image or likeness for compensation at below competitive levels. Each such
 26 exploitation of Plaintiff Quarry’s image or likeness is a use of his Identity Rights for which he has not
 27

28 ¹ Plaintiffs stand by their objection that this question calls for a legal conclusion.

1 been compensated at competitive levels due to Zuffa's ongoing scheme. Quarry Decl. ¶¶ 6-18; Weiler
 2 Decl. Exs. 2, 5-13, 16-17, 19-21; Quarry Decl. Ex. 1. As part of its ongoing anticompetitive scheme, Zuffa
 3 took overt acts to exploit Plaintiff Quarry's identity rights when it contracted with Topps and Reebok in
 4 2011 and 2014 to license them Plaintiff Quarry's Identity Rights. Weiler Decl. Exs. 15, 18.

5 **II. Plaintiffs' Statement of Undisputed Material Facts And Supporting Evidence.**

6 54. Plaintiff Quarry alleges that Zuffa used anticompetitive conduct to establish and maintain its
 7 dominance in the market for purchasing the services and identity rights of Elite MMA Fighters,
 8 including Plaintiff Quarry. CAC ¶¶ 5, 109-134.

9 55. Plaintiff Quarry alleges that Zuffa acquired monopsony power in the market for "Elite
 10 Professional MMA Fighter Services" by engaging in a series of anticompetitive actions, including (a)
 11 entering long-term, exclusive contracts with Elite MMA Fighters that effectively blocked the vast
 12 majority from fighting for rival promotions (CAC ¶¶ 109-114); (b) threatening or otherwise impairing
 13 other MMA promoters, sponsors and fighters who worked with or considered working with the UFC's
 14 potential rivals (*Id.* ¶¶ 116-119); (c) entering into exclusive agreements with sponsors and venues (*Id.* ¶¶
 15 120-127); and (d) acquiring multiple rival promotion companies that Zuffa had weakened through the
 16 foregoing conduct. *Id.* ¶¶ 129-134. As a result of this ongoing anticompetitive Scheme, Zuffa is the
 17 "only game in town" in the relevant markets. *Id.* ¶¶ 5, 109-134.

18 56. Plaintiff Quarry alleges that because of the monopsony power Zuffa acquired and maintained
 19 through the challenged anticompetitive scheme, Plaintiff Quarry and other members of the proposed
 20 Identity Class lacked the ability to "turn to alternative MMA Promoters to earn competitive
 21 compensation" for their identity rights. CAC ¶ 90.

22 57. Plaintiff Quarry alleges that Zuffa uses its monopsony power to "require UFC Fighters to
 23 enter into restrictive contracts," "expropriate the rights to UFC Fighters' Identities in perpetuity for
 24 little or no compensation (which is below competitive levels)," and "expropriate the Identities and
 25 deprive UFC Fighters of competitive levels of payment for the exploitation of their Identities in UFC
 26 Licensed Merchandise and/or Promotional Materials licensed or sold by the UFC or its licensees."
 27 CAC ¶ 91.

1 58. Plaintiff Quarry alleges that Zuffa used the monopsony power it acquired and maintained
2 through the ongoing anticompetitive scheme to take multiple overt acts to artificially under-compensate
3 the proposed Identity Class, including Plaintiff Quarry, for use of their images and likenesses. CAC ¶¶
4 3, 22, 34, 92, 107, 151.

5 59. Zuffa initiated its Fight Pass internet subscription service in December 2013. Weiler Decl.
6 Ex. 3 (Zelaznik Deposition Transcript at 17:11-12), Quarry Decl. ¶ 8.

7 60. Through Fight Pass, Zuffa makes available on the internet to consumers, for payment,
8 recordings of past MMA bouts from the UFC's own past events and also of MMA events put on by
9 other MMA promoters. Weiler Decl. Ex. 3 (Zelaznik Depo. Tr. at 14:23-15:12, 33:8-24, 68:22-69:4);
10 Weiler Decl. Ex. 4 (Zelaznik Depo. Ex. 175).

11 61. Through Fight Pass, which consumers access through Zuffa's website, Zuffa charges
12 consumers a subscription fee. Fight Pass was profitable and generated millions of dollars in revenue for
13 Zuffa. Weiler Decl. Ex. 3 (Zelaznik Depo. Tr. at 69:20-70:2, 71:2-4, 112:21-113:1).

14 62. Well after December 16, 2010, Zuffa made available for purchase by consumers each of
15 Plaintiff Quarry's fights in the UFC, and one of Plaintiff Quarry's fights with "Gladiator Challenge 14,"
16 on Fight Pass. Weiler Decl. Exs. 1 (Quarry Dep. Tr. at 104:15-17), 5 (Fight Pass Screenshots); Quarry
17 Decl. ¶ 8.

18 63. Zuffa included a clip of Plaintiff Quarry's fight with Rich Franklin as part of the opening
19 segment of its Pay-Per-View ("PPV") events throughout the limitations period, until at least 2015.
20 Quarry Decl. ¶ 6; Weiler Decl. Ex. 1 (Quarry Depo Tr. at 48:20-23).

21 64. Zuffa did not provide any compensation to UFC Fighters specifically in connection with
22 Zuffa's exploitation of their images or likenesses in Fight Pass. Weiler Decl. Ex. 3 (Zelaznik Depo. Tr. at
23 82:15-17, 83:11-13).

24 65. Zuffa did not provide any compensation to Plaintiff Quarry specifically in connection with
25 any content Zuffa made available on Fight Pass. Weiler Decl. Ex. 1 (Quarry Dep. Tr. at 104:15-17);
26 Quarry Decl. ¶ 8.

66. Zuffa made available and sold videos of Plaintiff Quarry's fights through Amazon, Sony, and Xbox in 2011 and 2014. Weiler Decl. Ex. 6. Plaintiff Quarry was not provided compensation specifically in connection with any of these sales. Quarry Decl. ¶ 9.

67. In January 2012, Zuffa broadcast a video of Plaintiff Quarry's fight with Demian Maia on its website, deeming it the "Submission of the Week." Weiler Decl. Ex. 7. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with this exploitation of his Identity. Quarry Decl. ¶ 10.

68. Zuffa produced "UFC Unleashed," a program that aired on Spike TV. Plaintiff Quarry was featured in episode Number 102 of "UFC Unleashed," featuring Plaintiff Quarry's victory over UFC Fighter Lodune Sincaid in the finale of Ultimate Fighter Season 1. Although the fight occurred in 2005, this video was published in 2013 to Zuffa's Brazilian language website. Weiler Decl. Exs. 8-9. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with this publication. Quarry Decl. ¶ 11.

69. Spike TV broadcast Plaintiff Quarry's win over UFC Fighter Shonie Carter in episode Number 107 of "UFC Unleashed." Zuffa posted the content on its website in 2013. Weiler Decl. Ex. 10. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with making this content available on its website. Quarry Decl. ¶ 11.

70. In November 2013, Zuffa published the "Top 20 Knockouts in UFC History," on Youtube to commemorate the UFC's twentieth anniversary. Weiler Decl. Ex. 2. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with making this content available online. Quarry Decl. ¶ 7.

71. A photograph of Plaintiff Quarry appears in a story published on March 26, 2013 by UFC called "16 Bizarre Moments in UFC History." Weiler Decl. Ex. 11. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with this exploitation of his Identity. Quarry Decl. ¶ 12.

72. On June 10, 2016, Zuffa published a photograph of Plaintiff Quarry's fight with Rich Franklin in a story on its website entitled "Behind the Lens: UFC Photog's Favorite KOs." Weiler Decl. Ex. 12. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with this exploitation of his Identity. Quarry Decl. ¶ 13.

1 73. Zuffa licensed to Topps the right to feature Plaintiff Quarry in UFC trading cards created by
2 Topps, including the “2010 Topps UFC Knockout” series that was published in February 2011. Weiler
3 Decl. Exs. 14-16. Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with
4 this exploitation of his Identity. Quarry Decl. ¶¶ 16, 21-22.

5 74. Zuffa licensed to Topps the right to feature Plaintiff Quarry’s image in the “2013 Topps
6 UFC Knockout” series as part of the “Ultimate Knockout Relics Set.” Weiler Decl. Exs. 14-15, 17.
7 Zuffa did not provide compensation to Plaintiff Quarry specifically in connection with this exploitation
8 of his Identity. Quarry Decl. ¶¶ 16, 21-22.

9 75. Zuffa has sold throughout the limitations period and continuing to this day posters
10 autographed by Plaintiff Quarry promoting his title fight in UFC 56 on the “ufcstore.com” website for
11 \$999.99 and \$1149.99. Weiler Decl. Ex. 13. Zuffa did not provide compensation to Plaintiff Quarry
12 specifically in connection with this exploitation of his Identity. Quarry Decl. ¶ 15.

13 76. Zuffa licensed fighter identities to Reebok in 2014. Reebok featured Plaintiff Quarry in a
14 series of UFC jerseys that Reebok first made available for sale in 2014. Weiler Decl. Ex. 18; Weiler Decl.
15 Ex. 1 (Quarry Dep. Tr. at 104:16-17). Neither Zuffa nor Reebok compensated Plaintiff Quarry
16 specifically in connection with this exploitation of his Identity. Quarry Decl. ¶ 18.

17 77. Zuffa licensed fighter identities, including that of Plaintiff Quarry, to Getty Images. Zuffa
18 business records show revenues generated from sales of Getty Images featuring Plaintiff Quarry after
19 December 16, 2010. Weiler Decl. Ex. 19; Quarry Decl. Ex. 1. Zuffa did not provide compensation to
20 Plaintiff Quarry specifically in connection with this exploitation of his Identity. Quarry Decl. ¶¶ 17, 20,
21 22.

22 78. Getty Images sells dozens of photographs of Plaintiff Quarry, including a medium resolution
23 photograph of Plaintiff Quarry for \$1805. Weiler Decl. Exs. 20-21.

1 Dated: March 24, 2017

Respectfully Submitted,
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